

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion into Competition for
Local Exchange Service.

Rulemaking 95-04-043
(Filed April 26, 1995)

Order Instituting Investigation on the
Commission's Own Motion into Competition for
Local Exchange Service.

Investigation 95-04-044
(Filed April 26, 1995)
**(FCC Triennial Review
Nine-Month Phase)**

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING MOTION TO COMPEL RESPONSES**

This ruling grants, in part, and denies, in part, the motion jointly filed December 10, 2003, by WorldCom, Inc. (MCI) and AT&T Communications of California, Inc. (AT&T) ("the Competitive Local Exchange Carrier (CLEC) parties") for an order compelling SBC Corp. (SBC) responses to MCI and AT&T's "Combined Set of Data Requests" (Combined DRs) in this proceeding.

The CLEC parties issued their Combined DRs on November 3, 2003, and asked for responses on November 24, 2003. As amended, the motion does not seek to compel a response on questions related to potential deployment for mass market switching since SBC is not presenting a potential deployment case at this time. However, MCI and AT&T reserve the right to move to compel on such questions should they become relevant at a later date.

The CLEC parties conducted a meet-and-confer session with SBC on December 4, 2003, and a second session December 5, 2003. SBC indicated it

would provide responses in two installments (on December 10 and 17, 2003) to those questions that SBC had agreed to answer in its November 24, 2003 response. SBC objected to 127 data request items, and refused to provide answers. The Joint Parties' motion seeks to compel responses to those items.

SBC filed a written response in opposition to the motion to compel on December 16, 2003. A telephonic discovery conference was conducted on December 18, 2003, where representatives for each party gave oral arguments before Administrative Law Judge (ALJ) Pulsifer with respect to the various items covered in the motion.

Since the motion was filed, concessions have been made on both sides, thus reducing the scope of disputed issues remaining to be resolved in this ruling. As applicable, the concessions and/or agreements made by parties are reflected in the discussion below. The data request items remaining in dispute are resolved as set forth below. To the extent that SBC has committed to provide a response to a question, it is understood that it does not necessarily waive its objections to such questions.

Framework for Resolving Disputes

A number of the disputed DRs relate to a difference of interpretation as to the scope of the nine-month proceeding. SBC holds a narrower view of the scope than does MCI and AT&T. Thus, determination of whether responses to particular questions should be compelled, in part, relates to how narrowly the scope of the proceeding is defined. Parties' disputes over the scope of the nine-month proceeding was previously addressed in the ALJ ruling dated October 20, 2003. That ruling defined the scope of the proceeding more broadly than SBC had advocated. Instead of limiting the nine-month proceeding to a mechanical tally of trigger data, the ruling included within the proceeding a

second analytical step to consider “exceptional circumstances” as discussed in § 503 of the Triennial Review Proceeding (TRO). As prescribed in § 503, in “exceptional circumstances,” the Commission may identify significant barriers that prevent entry by competitors even in markets that facially satisfy the self-provisioning trigger. The Commission may take such circumstances into consideration in defining the relevant markets for trigger analysis.

On the other hand, particularly in view of the limited time to conduct this proceeding, discovery should be kept within reasonable bounds. For example, since SBC has not presented a case for potential deployment where triggers are not met, it is appropriate not to compel responses to questions relating to that issue. The CLEC parties argue, however, that some information that SBC characterizes as relevant only to potential deployment is actually relevant to the market definition and trigger analysis that they intend to present.

Accordingly, where the disputed discovery items relate to the scope of the proceeding, this ruling resolves the dispute in a manner consistent with the scope of the proceeding as adopted in the October 20, 2003 ruling. Disposition of disputes will consider the extent to which a data request is reasonably calculated to lead to discovery of admissible evidence within the scope of the proceeding as set forth in the October 20, 2003 ruling.

Disposition of Individual Disputes

Q. 35 – Cross Connect Records and Evaluations

SBC indicates it has responded to this request, without waiving its objections.

Q. 40-42 – Hot Cut Performance

Parties seek information on Unbundled Network Elements (UNE) performance measures, claiming it is relevant in determining whether SBC’s

existing hot cut processes are robust and likely to lend themselves to successful scaling to meet the higher volumes of a batch process. SBC claims these requests are overbroad, burdensome, and not relevant. SBC also argues that the reports on UNE performance measures are available on SBC's CLEC website, that the parties already have information, including third party evaluations, descriptions of performance measures, and explanations of the methods for sampling and calculation, from the Section 271 proceedings where SBC's Operations Support System (OSS) performance was examined.

It is concluded that the information sought in this question is within the scope of the proceeding. Because at least some of the data is available from sources other than SBC, however, parties shall procure the data through such other sources as a first priority. To the extent responsive data is available from the "Section 271" proceeding, the parties should prepare and file an appropriate motion for relevant data from the Section 271 proceeding to be made accessible for use in the instant proceeding. To the extent responsive data is readily available on SBC's website, the CLEC parties shall obtain the data from that source. To the extent that parties still believe that SBC has data that is responsive to this request that is not available from other sources as noted above, they shall identify the remaining information to SBC. Except to the extent SBC explicitly identifies other public sources from which the remaining information may be obtained, SBC is directed to produce promptly any remaining information responsive to this DR, as identified by the parties, that is not available from the 271 proceeding, the SBC website or other explicitly identified public sources.

Q. 54; 73-74 101-102, 104-106, 109 – OSS Support for Wholesale Switching

These questions seek data concerning OSS capabilities for supporting wholesale switching, claiming it is relevant in determining whether SBC's OSS is

able to support seamless automated flow-through of CLEC orders in SBC's system. Because SBC has not relied upon the existence of any wholesale switching providers for its claims of no impairment at this point, the CLEC parties agreed during oral argument to withdraw this question at this time with the right to automatically reactivate it in the event SBC subsequently introduces claims asserting wholesale switching as a basis for its no impairment claims. In the event SBC introduces such claims concerning wholesale switching providers in subsequent testimony, it shall be required to respond with the data called for in this question. The responsive data shall be due concurrently with the mailing of its subsequent testimony asserting such claims.

Q. 80-90 – Planned OSS Capabilities

This series of questions relates to planned changes to the OSS and will be able to support similar automated processes for UNE-L services. SBC indicates it has responded to this request, without waiving its objections.

Q. 117 – Switch Information

The CLEC parties seek detailed information concerning each switch used by SBC to provide local exchange service throughout California. The parties argue that this information is relevant as a baseline to compare available features between Incumbent Local Exchange Carriers (ILECs) and CLECs, validity of ILEC proposed costs of an efficient CLEC, and for analysis of market definition at a wire center level. SBC argues that data concerning its own switches are irrelevant for the proceeding since trigger analysis focuses on CLECs, not ILECs.

SBC shall respond to this question, but the response shall be limited to switch data only applicable only to those Metropolitan Service Area (MSA) regions for which SBC has asserted no impairment exists. Also, SBC shall not be required to provide any cost data for switches as called for in item 117(l).

Q. 118 – Customer Loops

Parties seek information for each switch identified in response to Q. 117 concerning how many loops customers have at a given location, by type and service. Parties argue that this information is relevant as a baseline to assess market definition, and to determine the cross-over point at which multiline end users could be served economically by higher capacity loops. SBC objects, arguing that data concerning ILEC lines is not relevant to market definition or crossover point issues. To the extent the number of lines per wire center is relevant to market definition, SBC presents that information in its opening testimony.

SBC shall respond to this question, but the response shall be limited to switch data only applicable only to those MSA regions for which SBC has asserted no impairment exists. To the extent responsive information is already in its testimony, SBC may respond by providing the pertinent citation.

Q. 121 – Number of DS-0 Lines in Service

Parties seek information as to the total number of DS-0 voice-grade analog lines in each of SBC's wire centers being served by CLECs. Parties claim this question has a bearing on the adequacy of SBC's batch cut process with respect to the potential volume of loops that the batch cut process must accommodate. During oral argument parties agreed to withdraw subparts a and b of 121 relating to resale lines.

SBC shall be required to respond to subparts c through f of Q. 121 limited to lines in those seven MSA regions for which SBC asserts no impairment.

Q. 123 – Classification of Residential vs. Business Customers

Parties argue that how residential versus business customers are classified has a bearing on the volume of residential loops in a given wire center, and is

relevant to the adequacy of the batch cut process to serve residential or business markets, and relates to market definition. SBC shall be required to respond to this question.

Q. 124 g-p, r, s, and 125 a-j,l,m (Switch Deployment)

During oral arguments, the parties agreed voluntarily to withdraw this question.

Q. 126 – Switches Used to Provide Wholesale Capacity

This question asks for similar information as in Q. 117, but focuses on switches used to provide wholesale capacity rather than retail service. SBC claims this question duplicates information sought in Q. 117, and objects for all of the same reasons it objects to that question. Parties assert that information concerning the volumes that SBC serves from its wholesale switches is necessary to ascertain the volumes that will need to be accommodated in both batch cut and day-to-day customer migrations where UNE-L replaces UNE-P.

To the extent that Q. 117 addresses switches used to provide *retail local exchange service*, it is not duplicative of this question that is limited to switches used to provide *wholesale capacity*. Because SBC has not relied upon the existence of wholesale switching providers for claims of no impairment at this point, however, parties agreed during oral argument to withdraw this question at this time. The question shall be reactivated in the event SBC subsequently introduces claims asserting wholesale switching as a basis for its no impairment claims. In the event SBC introduces such claims concerning wholesale switching providers in subsequent testimony, it shall be required to respond to this question, but limited only to those MSA regions for which it asserts no impairment. The responsive data shall be due concurrently with the mailing of its subsequent testimony asserting such claims.

Q. 134 – Non-circuit Switches Used to Provide Local Exchange Service

Since SBC has not relied upon the existence of non-circuit switches for its claims of nonimpairment, no response shall be required at this time. In the event SBC introduces such claims concerning non-circuit switches in subsequent testimony, it shall be required to respond with the data called for in this question. Any responsive data shall be due concurrently with the mailing of its

subsequent testimony asserting such claims, in a similar manner as directed above for Q. 54.

Q. 140-41 – Enhanced Extended Link (EEL) Information

The parties seek detailed information relating to loops and transport connections at collocation arrangements to form EELs. EELs are the means by which CLECs are expected to reach customers served by UNE-P in wire centers where the CLEC is not currently collocated. EELs may be provided without collocation or through collocation at the end-user's serving wire center.

SBC objects to this question, arguing that it is beyond the scope of the limited trigger analysis called for under the TRO.

This information is relevant in assessing CLECs' ability to reach customers through SBC loops which, in turn, relates to the validity of arguments favoring the withdrawal of UNE-P. (See TRO § 462-463, 477, 480, and 583). SBC shall be required to provide data in response to this question.

Q. 148 – Switch Capacity

Request 148 seeks information concerning SBC California's end office and tandem switch ports. SBC objects to this question arguing that the trigger analysis should focus solely on the switches of competitors, and not on SBC California's switch ports, and argues that "transition issues" are not part of this nine-month proceeding, but are issues for a later date.

The requested data is relevant to the question of whether there are enough switch ports to handle the traffic for those UNE-P lines that are moved to CLEC switches. SBC shall be required to respond to this question.

Q. 150 – 152 – Tandem Switch Location and Capacity

The parties agreed to withdraw this question for the present under the same caveats as for Q. 54 since SBC is not putting on a potential deployment case

at this time. In the event SBC asserts a potential deployment case in subsequent testimony, this question shall be reactivated and SBC shall be required to respond on the same basis as for Q. 54.

Q. 153-55 – Technical Characteristics of Loops

The parties seek data on the technical characteristics of all loops that SBC considers to be DS-1 and/or voice grade loops. The parties seek this information to evaluate SBC's testimony regarding voice-grade/DS-0 loops, and to assist in defining the markets applicable to the trigger analysis. This data also relates to the capability of SBC loop plant to support DSL services. The parties view such data as relevant to the issue of impairment to the extent that CLECs may be precluded from offering DSL in competition with the ILEC.

SBC shall be required to provide a response to Q. 153-155.

Q. 156-160; 168-171 – Breakdown of Loops in Service; Loop Plant Baseline Data

Requests 156-160 and 168-171 seek state-wide and wire-center level data regarding the loops SBC California provisions, the services provided over those loops, the types of customers served, and the types of loops used, for each month since July 1, 2001. SBC claims these requests are overly broad and burdensome. SBC does not maintain data that old in any kind of readily accessible format, but the only information that is currently accessible to SBC California is for a rolling 13-month basis, or dating back to November 2002. Moreover SBC argues that the information is not relevant.

The parties argue that specific line count data is relevant to a determination of the crossover point between mass market and enterprise customers, and provides a baseline for estimating churn quantities. Parties also claim the data sought on loop plant is relevant to market definition, including

possible difficulties using UNE loops to customers served by IDLC while still providing UNE-P to CLECs using those same loops at those same premises.

SBC shall be required to provide data responsive to these questions, but limited only to the most recent 12-month period and only for the seven-MSA regions for which SBC has asserted no impairment.

Q. 172 – Dark Fiber

Request 172 seeks, “detailed information concerning dark fiber in the loop plant for every wire center that is currently available for use by CLECs. The parties assert that the requested information is directly relevant to the “mass market switching trigger analysis” and analysis of loop and transport UNEs.

SBC objects, arguing that the requested information has no bearing on the mass market switching trigger analysis, which simply asks where competitors are using switches to provide mass market services. SBC claims that the requested information is irrelevant to the loop and transport analyses, because those analyses do not concern SBC’s own facilities, but focus on *CLEC* facilities, and the locations and routes where *CLECs* could deploy their own facilities. SBC also objects to the term “detailed information” as being vague and ambiguous.

SBC shall be required to provide the requested information limited to the loop plant applicable to the seven MSA regions for which it has asserted no impairment. The “detailed information” shall be defined as clarified in the parties’ Motion to Compel, thus limited to existing records maintained by SBC as to the amount of dark fiber in its loop plant by location and capacity.

Q. 173 – Warm Line Information

This question seeks data on a statewide and CLLI-code-specific basis the percentage of working loops used or available to support SBC retail services that are configured as “connect through”/“warm line” (i.e., loops that have electrical

continuity between the customer premises and the SBC switch, and over which a person at the customer premises can call 911 and SBC repair service). The parties claim this information is relevant to evaluate SBC's claimed ability to quickly provision volumes of loops and in assessing the volumes of lines available to be placed in service to a CLEC and the lines a CLEC may be disconnecting.

SBC shall be required to provide the requested information limited to the seven MSA regions for which it has asserted no impairment.

Q. 180-81 – Restrictions on Equipment in ILEC Collocation Space

SBC has committed to provide responses to these questions.

Q. 193 and 196 – Revenue per Line: Residential and Business Customers; Average Monthly Revenue Per Line

The parties agree to withdraw these questions.

Q. 212 – DLC Partitioning

This question asks whether SBC California's Digital Loop Carriers (DLCs) are "partitionable," and asks for SBC California's explanation of why it does or does not intend to partition its DLCs, plus detailed information regarding what is required to partition DLCs. The parties assert that the requested information goes both to whether batch hot cut proposals are adequate and to impairment considerations. This information will assist CLECs in analyzing how they will be able to serve end users if SBC makes wide use of DLC to serve customers.

SBC shall be required to respond to this question.

Q. 214 – Alternative to Loops Configured Through Remote Terminals

This question asks about alternatives to loops to provide Plain Old Telephone Service (POTS) where an analog loop terminates to a remote terminal. The parties assert that this data request is relevant to batch hot cut issues and the issue of impairment and relates to potential causes of service degradation or

inability to serve a portion of the market that UNE-L provisioning would cause due to the use of remote terminals and DLC equipment.

SBC asserts that the requested information is not relevant to the analysis before the Commission that is limited to whether the mass market switching trigger is met.

SBC shall be required to respond to this question.

Q. 235-36 and 238-40 – Demand Growth/Decline

This question seeks data on demand growth and decline for SBC lines in service going back six years and forward three years. The parties argue that this information is relevant with respect to analysis of competitors' ability to target, serve, and compete. The parties argue that these factors are relevant for definition of the market as discussed in the TRO at § 495.

Although demand growth and decline data may be relevant to the parties' approach to market definition, the need for historic data going back six years has not been justified. SBC shall be required to provide responsive data to this question limited to the most recent 12 months and applicable only to the seven MSAs for which it has asserted no impairment.

Q. 272 – Targeted Prices/Price Floors

This question seeks a description of the approach and manner in which SBC segments its sales and marketing efforts and personnel on the basis of customer size, type, monthly level of revenues, and/or service(s) taken by customer (individually or as part of a bundle), and the basis on which such segmentation is made. SBC objects on the basis that this information is overbroad and burdensome, not reasonably calculated to lead to discovery of admissible evidence, and seeks information that SBC does not collect, track, or maintain.

SBC shall provide a responsive answer limited to explaining its marketing policy regarding the appropriate cross-over point where SBC considers that it makes economic sense for multi-line DSO customers to be served via a DS1 loop, as discussed in ¶ 497 of the TRO.

Q. 277 – Monthly Revenue Per Line

The parties agreed during oral argument to withdraw this question.

Q. 309 – Winbacks

This question seeks information about how SBC defines churn, and certain data regarding its winback of customers. SBC objects, arguing that its own churn data is not relevant here. To the extent customer churn is relevant at all, SBC argues that only a CLEC's churn is relevant. In the *Triennial Review Order*, the Federal Communications Commission (FCC) concluded that on a nationwide basis competitors are impaired by current hot cut processes because CLEC churn can make it uneconomical to pay high non-recurring hot cut charges. *Triennial Review Order*, ¶ 471. SBC argues that the CLECs already know what their customer churn is, and do not need information about SBC California's customer churn.

The parties argue that data concerning SBC churn is necessary to get an accurate overall picture concerning churn rates on an overall market basis.

It is concluded that the parties have not provided a sufficient argument to conclude that the requested information sought in this question is reasonably calculated to lead to discovery of admissible evidence. Parties' justify their request for SBC churn data on the premise that it will provide a picture of "overall" churn, but the TRO does not call for data on "overall" churn. Rather, it relates potential impairment to CLEC churn. Moreover, the parties have not justified the need for quarterly data going back to 1999.

In conclusion, SBC shall not be compelled to respond to this question.

Q. 319 – Modifications Needed to Accommodate Competition

This question asks SBC to identify the ILEC and CLEC systems and processes that need to be established, altered or enhanced to accommodate dynamic facilities-based local telecommunications competition. To the extent it is asked to identify *CLEC* “systems and processes that need to be established, altered or enhanced,” SBC objects in that it is not a CLEC.

To the extent it is asked to identify *ILEC* “systems and processes that need to be established, altered or enhanced,” SBC objects to the request as irrelevant and contrary to the 1996 Act and the FCC’s impairment standard. SBC argues that an ILEC has no obligation under the Act to create a superior network for CLECs, but that the issue is simply whether an efficient new entrant is impaired without access to certain unbundled network elements of SBC California’s *existing* network

The parties assert that if “a CLEC [would] not be able to provide local services using UNE-L until five days after it could provide service using UNE-P, that would be relevant to operational impairment.” SBC responds that the potential deployment test does not compare UNE-P to UNE-L, but simply asks whether an efficient new entrant could economically enter a relevant market using its own switch to serve mass market customers. Moreover, as noted previously, SBC is not pursuing a potential deployment test for mass market switching.

SBC also argues that the data request is also vague and ambiguous insofar as it requires speculation about the meaning of “dynamic” facilities-based competition. The parties respond that Webster’s Dictionary defines “dynamic” as “relating to or tending toward change or productive activity.” From that, SBC would interpret Request 319 to ask SBC to identify the “ILEC and CLEC systems

and process that need to be established, altered or enhanced to accommodate facilities-based local telecommunications competition that is tending toward change or productive activity.” So interpreted, the request still calls for speculation, and is still vague and ambiguous. Facilities-based competition is in a constant state of change.

In view of the above arguments, the parties have not provided sufficient basis to compel a response from SBC to this question. The motion to compel with respect to Q. 319 is denied.

Q. 320 – Next Generation Digital Loop Carrier (GDLC) Deployment

This question asks whether SBC has “considered deploying NGDLC arrangements that packetize both the voice and data services,” and, if so, seeks a description of all “alternatives considered” and production of any documents that refer, relate to or discuss SBC’s “deployment of NGDLC arrangements that packetize both the voice and data services.” The parties argue that this data is relevant because “[i]f SBC has plans to deploy such systems, the Commission and the CLECs must understand to what extent and how that would affect CLECs in a UNE-L only world” because “[t]he TRO found that ILECs were not required to unbundle the packetized aspect of NGDLC deployments.”

SBC objects, arguing that this data is irrelevant to any analysis the Commission is required to conduct in the nine month proceeding, and that the CLECs are wrong in positing a UNE-L only world where NGDLC arrangements are deployed. SBC argues that pursuant to the FCC’s rules, where such loops are deployed, an ILEC is still required to provide unbundled access to a complete UNE loop. 47 C.F.R. § 51.319(a)(2). The only difference is that the ILEC “is not required to provide access to the packet switched features, functions and

capabilities of its hybrid loops” (*id.*) – because CLECs are not impaired without access to packet switching. *Triennial Review Order*, ¶ 537.

SBC further argues that even if it were relevant whether “SBC has plans to deploy such systems” (although SBC indicates that they are not), that is not what Request 320 asks. Request 320 asks whether SBC has *ever considered* deploying such NGDLC arrangements. It does not ask if SBC actually has any plans to do so. Whether SBC California ever “considered” deploying this kind of NGDLC arrangement is thus doubly irrelevant.

Since SBC has indicated that it does not have plans to deploy NGDLC arrangements that packetize both the voice and data services, there appears to be no further response applicable to this question. Thus, SBC shall not be required to respond further to this question.

Q. 333-36 – Use of UNE-P Versus UNE-L for Mass Market Customers

These questions ask about the processes and costs involved “in serving mass market customers with combined CLEC voice and xDSL services in both UNE-P and UNE-L environments.” SBC argues that UNE-P related information has no place in this proceeding, and that the potential deployment test does not compare UNE-L to UNE-P, but looks solely at UNE-L and the ability of a CLEC to economically provide service using its own switch to serve mass market customers. *TRO*, n.1588 (“[A]n entrant is not impaired if it could serve the market in an economic fashion using its own facilities.”). Requests 335-336 ask for similar detailed descriptions with respect to a CLEC providing service with its own switch. SBC argues that data likewise is not relevant here with respect to the “operational barrier” factors that a state commission must consider in a potential deployment analysis, and that the operational matters addressed by

Requests 335-336 appear nowhere in the FCC's discussion of the "operational barriers to be examined" (*Triennial Review Order*, ¶¶ 511-514).

The parties argue that because combined voice and xDSL services are part of the bundled services that CLECs provide, these questions are relevant to determining whether SBC is operationally capable of handling such situations in a UNE-L environment.

In the ALJ ruling dated October 8, 2003, it was determined that, in analyzing impairment, the scope of the proceeding would include consideration of all relevant sources of revenue from the loop, including both voice and data sources, and would include line splitting provisioning arrangements. Consistent with the procedural scope identified in that ruling, it is determined that these questions are relevant, and SBC is directed to produce a response.

Q. 337-38 – Copper Loop Retirement

Requests 337-338 seek information regarding SBC's plans to retire copper loop plant and the number of lines served via DLC for which alternative copper loop facilities are not available. The parties assert that the requested information is relevant to market definition, trigger analysis, and operational impairment. SBC disagrees, arguing that the trigger analysis simply asks where competitors are currently serving mass market customers via their own switches, and that copper loop retirement and DLC are not relevant.

It is concluded that these questions are relevant to the proceeding, and relate to CLECs' access to loops on which they can provision voice plus DSL. SBC is hereby required to respond to these questions.

Q. 340 – Composition of SBC's Loop Plant

This question seeks information regarding the percentage of SBC residential loops in California qualifying as 'hybrid loops' that contain both

copper and fiber, separately for loops in service and for any loops served by the wire center. The parties assert that this information is relevant to the unbundling determination for hybrid loops set forth in the TRO paragraphs 285 to 292. SBC disagrees, arguing that the FCC made a nation-wide, binding determination with respect to unbundling hybrid loops, and did not direct or allow the state commissions to undertake any further analysis.

AT&T and MCI also assert that the requested information “relate[s] to operational impairment,” citing paragraph 286 of the TRO. SBC responds that paragraph 286 concerns the FCC’s impairment analysis of hybrid loops, and has nothing to do with any analysis before this Commission. SBC also argues that operational impairment issues are irrelevant here, because SBC is not pursuing a mass market switching potential deployment case.

Even though SBC is not pursuing a potential deployment case, operational impairment may still be an issue in the context of the TRO § 503, as discussed previously. This question is within the scope of permissible inquiry concerning possible impairment in relation to the availability of copper loops and fiber and the ability of CLECs to provide service using UNE-L. SBC is directed to respond to this question.

Q. 364-65 ; Q. 366-68; Q.370-71

The parties voluntarily agreed to withdraw the above-noted questions from their motion to compel during oral argument.

Q. 372-76 – Enterprise Circuit Cutovers

Requests 372-376 pertain to information regarding “transitioning enterprise circuits.” SBC objects, arguing that nothing in the TRO requires – or allows – a state commission to address “transition” issues with respect to high capacity loops and transport as part of the impairment analysis.

SBC argues that the FCC's potential deployment analysis asks whether an efficient *new entrant* could enter a market and provision its own facilities to provide service, but does *not* circularly assume that that efficient new entrant is *already* providing service via UNEs, and then ask how the entrant could "transition" to its own facilities.

Moreover, the FCC's rules specifically state the factors that a state commission must consider in any potential deployment analysis with respect to high capacity loops or transport. 47 C.F.R. §§ 51.319(a)(5)-(6), 319(e)(2)-(3). "Transition" operational issues are not among those factors.

The parties argue that these questions are relevant in addressing difficulties involved in transitioning enterprise circuits, and ensuring that an adequate time and procedure is in place to transition these circuits to alternative facilities in the event any UNE transport is withdrawn. The parties justify this information as pertinent for consideration of possible barriers to entry. The parties argue that the TRO identifies issues for which these data are sought in § 417, relative to transition procedures, and § 411 relative to potential barriers to entry.

It is concluded that this information is within the relevant scope of the proceeding, as by parties. SBC shall be directed to respond to this DR item.

Q. 378 – Costs of Interoffice Fiber Facilities

Request 378 asks for information regarding "the last 10 new interoffice fiber facilities that [SBC] ha[s] constructed." Pursuant to the *Triennial Review Order*, the potential deployment analysis for transport must focus on particular routes, and thus the only routes that are relevant here are those for which SBC claims there is no impairment without unbundled access to dedicated transport. With respect to those routes, the parties have asked a series of narrower data

requests for specific information – including cost data – regarding those specific routes. SBC asserts that because it is voluntarily responding to those other requests, Request 378 is duplicative of those requests.

The parties agreed this question relates to a potential deployment case. Because SBC is not presently putting on a potential deployment case, the parties agreed during oral arguments to defer seeking responses to this question until or unless SBC presents a potential deployment case in subsequent testimony. In the event parties subsequently renew this question, they agree to reduce the requested number of new interoffice fiber facilities from ten down to five. If parties renew this request, they shall also be required to show that the request is not duplicative of other items that SBC has already answered, and is limited to routes where SBC challenges the FCC's impairment findings.

Q. 379 – Availability of Wholesale Transport Capacity

Without waiving its objection as to relevance, SBC agrees to provide a response to this question.

Q. 380-82 – Fiber Utilization

These questions seek information about the past, present, and future levels of dark fiber in SBC's loop plant in California and the OCn levels of any fiber in the loop plant. The parties argue that the requested data is "relevant to the market, revenue, cost and competition factors in any potential deployment analysis." SBC disagrees, arguing that the potential deployment analysis looks at an efficient new entrant's likely costs and revenues, and deny that SBC's fiber loop OCn levels or dark fiber levels have anything to do with that analysis.

MCI and AT&T also assert that to the extent an alternative wholesale provider of DS1 or DS3 facilities "acquire their facilities from unbundled dark fiber," the requested data is relevant to "their status as 'operationally capable of

continuing to provide wholesale loop capacity,'” which is relevant to the trigger analysis. SBC disagrees, arguing that to the extent a wholesale provider using unbundled dark fiber is counted in the high capacity loop “trigger” analysis with respect to a particular customer location, the only relevant issue is whether the wholesale provider will continue to have access to dark fiber to that *particular* location. The FCC’s high capacity loop trigger analysis requires a granular customer location-by-customer location analysis, and the data sought by these requests – seeking broad information on the level of dark fiber and OCn level of SBC California’s loop plant as a whole – is irrelevant to that granular analysis.

MCI and AT&T further assert that this information is relevant to the “transition [of] services off of ILEC UNEs which are to be withdrawn.” SBC disagrees, arguing that high capacity loop transition issues are not relevant to this proceeding, and that the FCC did not find any “operational impairment” with respect to the migration or transition of high capacity loops, and did not include such issues in the exhaustive list of impairment factors a state commission must consider in any high capacity loop potential deployment analysis.

In consideration of the arguments presented on both sides, it is concluded that the CLEC parties have not presented persuasive rationale for compelling a response to these questions. The motion to compel responses to Q. 380-382 is denied.

Q. 401 – 410

During oral argument, parties agreed voluntarily to withdraw each of the remaining questions in dispute, comprised of DR 401-410.

IT IS RULED that:

1. The motion to compel is granted, in part, and denied, in part, pursuant to the discussion of each disputed item as set forth above.

2. SBC is directed to provide responses to the disputed data requests in accordance with the terms and limitations set forth in the discussion above, with delivery of responses within three business days of the effective date of this ruling.

Dated Decenber 22, 2003, at San Francisco, California.

/s/ THOMAS R. PULSIFER

Thomas R. Pulsifer
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Motion to Compel Responses on all parties of record in this proceeding or their attorneys of record.

Dated December 22, 2003, at San Francisco, California.

/s/ HELEN FRIEDMAN
Helen Friedman

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.